

ORDINANCE NO. 2149

AN ORDINANCE REGULATING MARIJUANA ESTABLISHMENTS WITHIN THE CITY AND COUNTY OF BROOMFIELD

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. That the operation of marijuana cultivation facilities and marijuana product manufacturing facilities within the City and County of Broomfield is hereby prohibited. The operation of retail and medical marijuana stores within the City and County of Broomfield is permitted only in accordance with this chapter and only after the effective date of this Ordinance.

Section 2. Section 17-02-090 of the Broomfield Municipal Code is hereby amended to read as follows:

17-02-090 - Medical marijuana businesses ~~prohibited~~.

(A) ~~Medical marijuana businesses, including medical marijuana centers, optional premises cultivation operations, and marijuana-infused products manufacturing operations are prohibited within the City and County of Broomfield. In addition to any other penalties that may exist under state, federal, and local laws, violation of this section shall be punishable by a fine not exceeding \$1000.00, or by imprisonment not exceeding one year, or by both such fine and imprisonment, as set forth in chapter 1-12, B.M.C.~~

(B) Medical marijuana stores licensed pursuant to the Colorado Marijuana Rules to operate a business as described in C.R.S. § 44-10-501, and that sell medical marijuana to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, require a license pursuant to Chapter 5-42, Broomfield Municipal Code.

Section 3. Chapter 5-42 of the Broomfield Municipal Code is hereby created to read as follows:

Chapter 5-42 - Marijuana

5-42-010 - Short title.

This chapter is known and may be cited as the “Broomfield Marijuana Code.” Reference to the Broomfield Marijuana Code and the applicable section or sections thereof shall be sufficient when citing the provisions of this chapter in any legal document, including, but not limited to, summons, subpoena, pleading, summons and complaint, and memorandum.

5-42-020 - Legislative declaration.

The city council declares that the purpose of this chapter is to provide for the regulation, control, and licensing of the sale of retail and medical marijuana products within the city for the purpose of protecting the health, safety, and welfare of Broomfield residents and guests.

5-42-030 - Definitions.

- (A) As used in this chapter, unless the context clearly requires otherwise, the following words and terms shall have the meanings set forth in this section:
- (1) *Applicant* means a person that has submitted an application for licensure, or application for renewal of licensure, pursuant to these rules.
 - (2) *City clerk* means the city and county clerk, or the clerk's designee.
 - (3) *City manager* means the city and county manager, or the manager's designee.
 - (4) *Entity* means a domestic or foreign corporation, cooperative, general partnership, limited liability partnership, limited liability company, limited partnership, limited liability limited partnership, limited partnership association, nonprofit association, nonprofit corporation, or any other organization or association that is formed under a statute or common law of the state of Colorado or any other jurisdiction as to which the laws of this state of Colorado or the laws of any other jurisdiction governs relations among owners and between the owners and the organization or association and that is recognized under the laws of the state of Colorado or the other jurisdiction as a separate legal entity.
 - (5) *Good cause*, for purposes of refusing or denying a license application, revoking or suspending a license, or denying a license renewal, means:
 - a. The licensee or applicant has violated, does not meet, or has failed to comply with, any of the terms, conditions, or provisions of any applicable state or local law, or any rule and regulation adopted pursuant thereto, related to the cultivation, processing, manufacture, storage, sale, distribution, testing, transport, or consumption of any form of marijuana;
 - b. The licensee or applicant has failed to comply with its approved plans or any special term or condition placed on the license by order of the state licensing authority or the licensing authority;
 - c. Evidence the licensed premises have been operated in a manner that adversely affects the public health, safety, or the general welfare of the city or the immediate neighborhood where the establishment is located, which evidence may include a continuing pattern of violations of the terms and conditions of a license issued by the city or the state, a continuing pattern of unlawful or violent activity occurring in the location and in association with the operation of the business, or other violations of this code; or
 - d. Evidence the licensee, or any principal officer, any person required to request a finding of suitability by state law or administrative rule, manager, agent, or employee of the license has violated any provision of this chapter or committed any unlawful act under this chapter.

- (6) *Investigator* means such person(s) authorized by the city to perform the investigative duties set forth in this chapter and such other duties as the city or local license authority may reasonably direct.
- (7) *License* means a revocable privilege to lawfully operate a marijuana establishment pursuant to this chapter.
- (8) *Licensed premises* means the premises specified in an application for a license under this chapter, which are owned or will be in the possession of the licensee and within which the licensee is authorized to sell marijuana in accordance with all applicable laws.
- (9) *Licensee* means a person licensed pursuant to this chapter.
- (10) *Limited access area* means a building, room, or other contiguous area upon the licensed premises where marijuana is stored, weighed, packaged, sold, possessed for sale, or transferred, under control of the licensee.
- (11) *Licensing authority* means the city clerk as authorized to issue licenses and renewal licenses pursuant to C.R.S. §§ 44-10-103(28) and 44-10-301 and pursuant to this chapter.
- (12) *Local licensing authority* is the local licensing authority, as established in sections 5-28-050 and 5-32-050, B.M.C., which is authorized to hear and decide violations of this chapter by a licensee, to impose penalties for violations as provided for by this chapter, and to approve or deny changes as provided for by this chapter.
- (13) *Manager* includes that person or those persons who manage, direct, supervise, oversee, and administer the transactions and acts of servants of the establishments governed by this chapter and includes, when applicable, the definition provided in the Colorado Marijuana Rules and C.R.S. § 44-10-103, as amended.
- (14) *Marijuana* means all parts of the plant of the genus *cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- (15) *Marijuana accessories* means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.
- (16) *Marijuana establishment* or *marijuana store* or *marijuana business* means a facility licensed by the city and state to operate in the city as a retail marijuana store, or a co-located retail marijuana store and medical marijuana store, that distributes, dispenses, displays, sells, or otherwise provides marijuana products to

consumers, patients, or caregivers as authorized pursuant to Section 16 of Article XVIII of the Colorado Constitution and other applicable state law.

- (17) *Marijuana products* means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including but not limited to concentrate, that is cultivated, manufactured, distributed, or sold by a licensed marijuana establishment. “Marijuana products” include medical marijuana as defined in this chapter.
 - (18) *Medical marijuana* means marijuana that is grown, manufactured, or sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.
 - (19) *Medical marijuana store* means a person authorized to be licensed to operate a business as described in the state statutes and Colorado Marijuana Rules that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law, or an entity licensed by a state agency to sell marijuana and marijuana products pursuant to Article XVIII, Section 14 of the Colorado Constitution, state statutes, or the Colorado Marijuana Rules.
 - (20) *Person* means a natural person, an estate, a trust, an entity, or a state or other jurisdiction.
 - (21) *Retail marijuana store or establishment* means an entity or operation, whether licensed or not, that purchases or obtains marijuana from marijuana cultivation facilities and/or marijuana and marijuana products from marijuana product manufacturing facilities to sell marijuana and marijuana products to consumers.
 - (22) *Selection committee* means a committee composed of staff, which may include but is not limited to representatives with experience and expertise in land use planning, law, code enforcement, safety, public health, or sustainability. Chapter 2-70, B.M.C. - *Ethics*, applies to this committee, and committee members are considered appointees for chapter 2-70 purposes.
- (B) Other definitions not specifically enumerated in this section shall be as defined, as applicable, in the state statutes and Colorado Marijuana Rules and in chapter 1-04 of this code.

5-42-040 - License required.

- (A) All persons who are engaged in or who are attempting to engage in the distribution, testing and/or sale of marijuana in any form shall do so only in strict compliance with the terms, conditions, limitations, and restrictions in Section 14 and Section 16 of Article XVIII of the Colorado Constitution, state statute, the Colorado Marijuana Rules, this code, and all other state and local laws and regulations.
- (B) Within the city, it is unlawful for any person to sell or to possess for sale any marijuana product unless licensed to do so, unless the license required is in full force and effect,

and all applicable fees and taxes have been paid in full and the license applies to the person and location where the sale or possession occurs.

- (C) No license may be issued to authorize marijuana product sales anywhere other than at a fixed location that is designated in the license application and approved license.
- (D) Any person selling marijuana without a license is a per se nuisance.
- (E) All marijuana business locations must be licensed separately, even if owned and/or operated by the same owner/operator.

5-42-050 - Licensing authority; established; powers.

- (A) Broomfield City Council designates the city clerk as the licensing authority referred to in C.R.S. § 44-10-103(28) that has the authority for the city to issue initial marijuana business licenses.
- (B) The city clerk shall have and is vested with the authority to grant or to refuse for good cause or as set forth in this chapter, licenses for the sale at retail of marijuana products and to refer matters to staff or the investigator for investigation. The city clerk shall have all the powers provided in this chapter, and shall have all the powers of the local licensing authority, as set forth in C.R.S. §§ 44-10-103 and 44-10-301 and the Colorado Marijuana Rules, and the regulations promulgated thereunder.
- (C) The selection committee is vested with the authority to review and select or deny applications as set forth in the chapter.
- (D) The local licensing authority shall have and is vested with the authority to suspend or revoke licenses granted under this chapter for good cause or as set forth in this chapter. The local licensing authority shall have all the powers provided in this chapter, including the power to approve changes authorized in B.M.C section 5-42-050.
- (E) Nothing in this chapter shall be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a license issued pursuant to this code.

5-42-060 - Licensing authority; rule and regulation promulgation.

The licensing authority and local licensing authority may promulgate procedural rules and regulations for carrying out the provisions of this chapter; provided that the same are not in conflict with C.R.S. §§ 44-10-103 and 44-10-301 and the Colorado Marijuana Rules, or any other provision in this chapter.

5-42-070 - City clerk; powers and duties - licensing.

The city clerk shall receive all applications for licenses and permits and, upon receipt of full payment of such fees as are required by state law and by this chapter, shall issue all licenses and permits as approved by the selection committee and, if required due to the number of qualified applicants, chosen by the random lottery.

5-42-080 - City clerk; powers and duties - license violations.

The city clerk shall serve as the official secretary of the local licensing authority, and shall provide or cause to be provided the necessary secretarial and reporting services for the authority. The city clerk shall attend all meetings of the authority. All public notices required by this chapter and by C.R.S. § 44-10-101, *et seq.*, and the Colorado Marijuana Rules, as amended, and the regulations promulgated thereunder, shall be accomplished by the city clerk.

5-42-090 - Locational Requirements.

- (A) No application for a license or for a change of location shall be granted for premises proposed on a residentially zoned or used property, on any property designated open space or open lands, or any property used for a public purpose.
- (B) Setbacks and separation requirements shall be measured from the parcel boundary of the parcel of land that the premises is proposed on to the parcel boundary of the adjacent use subject to the setback standards established in subsection C.
- (C) An application for a license or for a change of location may only be granted if it meets the following minimum required setbacks:
 - (1) Licensed premises shall be no less than 250 feet from any residentially zoned or used property (zoning districts A(B), A(W), A(W)-RR, A-1, A-1(J), A-1(A), A-2(J), A-2(A), A-3(A), E-1, E-2, E-3, R-1, R-1(J), R-1-PUD, R-1A(J), R-2(J), R-3, R-3-PUD, R-5, R-5-PUD, R-PUD, RC(J), RE(A), RR, RR(B), and PUD plans including only residential uses within Broomfield.)
 - (2) Licensed premises shall be no less than 250 feet from any parcel used for residential purposes in an adjacent city or county.
 - (3) Licensed premises shall be no less than 1,000 feet from any public or private school serving students in any grade from kindergarten through 12th grade.
 - (4) Licensed premises shall be no less than 1,000 feet from any drug or alcohol treatment facility.
 - (5) Licensed premises shall be no less than 1,000 feet from any other licensed premises.
 - (6) There shall be no more than one licensed premises located on any given street within the city.
- (D) Any medical marijuana establishment licensed in Broomfield must be co-located with a licensed retail marijuana establishment.

5-42-100 - Application contents.

- (A) An applicant shall file with the city clerk the following at the time of application for a license pursuant to this chapter:
 - (1) A cover letter providing an overview of the proposed establishment and reasons the applicant has chosen to locate in Broomfield.
 - (2) An operating plan for the proposed marijuana establishment including the following information:
 - a. A detailed description and vicinity map of the proposed location, including a full address.

- b. A general description of site improvements proposed and the land development approvals required therefor.
- c. A floor plan showing all interior dimensions of the licensed premises and the layout of the marijuana establishment, including all limited access areas, areas of ingress and egress, and all security cameras. Such floor plan shall also show the principal uses of the floor area depicted therein.
- d. A description of the design of the establishment.
- e. A description of the products and services to be provided by the facility.
- f. A community outreach plan, including:
 - 1. The applicant's history of community and neighborhood involvement with other similar businesses;
 - 2. Written policies and procedures to address community concerns and complaints;
 - 3. A designated point of contact, with comprehensive contact information, for public questions and concerns; and
 - 4. Measures and procedures for mitigating any impacts to the neighborhood, foreseen or unforeseen.
- g. An odor management plan establishing the ability to prevent odor of marijuana from being detected by an ordinary person at the exterior of the store or perceptible at any adjoining business, building, or property of the marijuana store and the ability to install an air filtration system if necessary, including a description and plan of the odor control system to be utilized, such as roof ventilation and/or carbon air filtration, or other applicable odor control as required for compliance.
- h. A security plan indicating how the applicant intends to comply with the requirements of state statutes and the Colorado Marijuana Rules as well as the following detailed information:
 - 1. Evidence that the premises will comply with all security and video surveillance requirements set forth in the Code of Colorado Regulations 1 CCR 212-3, if applicable;
 - 2. The establishment's procedures for preventing the use of marijuana on the licensed premises;
 - 3. Security measures taken by the licensee to prevent unauthorized individuals from entering the limited access area portion of the licensed premises;
 - 4. The licensee's plan to prevent theft or the diversion of marijuana, including maintaining all marijuana in a secure, locked room that is accessible only to authorized persons and, when the business is closed to the public, in a safe or vault or equivalent secured fixture;
 - 5. The type of alarm system and outdoor lighting to be used by the licensee;
 - 6. A copy of the licensee's security alarm system monitoring contract;

7. A lighting plan showing the lighting outside of the marijuana establishment for security purposes and compliance with applicable city requirements;
 8. A plan for disposal of any marijuana that is not sold and any waste generated from store operations; and
 9. A plan for preventing underage persons from entering the premises.
- i. A sustainability plan that describes business practices that will be implemented to mitigate environmental impacts including energy consumption, water consumption, and waste generation. Suggested items for inclusion in the sustainability plan include office operations and supplies, drinking water and other water usage, and facility cleaning, waste handling, and energy usage.
 - j. If marijuana delivery is contemplated, a delivery plan that includes details around security and buyer age verification during the delivery process.
 - k. If walk-up or drive through marijuana services are contemplated, a description of how this would be set up and security measures to address youth diversion of marijuana and potential criminal behavior.
- (3) Proof of ownership of the property on which the establishment will be located or, in the event the applicant is not the owner of record of the real property upon which the marijuana establishment is or is to be located, the application must be accompanied by a notarized statement and consent from the owner of the property acknowledging that a marijuana establishment is or may be located on the property. In addition to furnishing such notarized statement, the applicant shall furnish the name and address of the owner of record of the property, as well as a copy of the lease or rental agreement pertaining to the premises in which the marijuana establishment is or may be located;
- (4) Zoning compliance verification. Applicants must obtain a preliminary determination from the Broomfield Planning Division in the form of a zoning verification letter, which states whether the location proposed for licensing is an eligible location for a marijuana establishment. This preliminary determination shall not preclude a later determination that the proposed location does not comply with any one or more zoning or land use laws of the city.
- (5) Copies of background checks, photo identification, and fingerprints of all persons who are required to request a finding of suitability by state law or regulation, and any other person required by the licensing authority, as well as a statement of all violations and penalties for any infractions or offenses by the applicant or applicant's controlling beneficial owners, principal officers, managers, agents, or employees relating to any marijuana establishment in this or any other state or a statement that no such violations or penalties have occurred.
- (6) A statement of whether or not any person holding any ownership interest has:
 - a. Been denied an application for a marijuana establishment license by the state in this or any other jurisdiction or in any other state, or had such a license suspended or revoked in Colorado or any other state; and

- b. Been convicted of a felony or has completed any portion of a sentence due to a felony charge within the preceding seven years.
- (7) Proof that the applicant has completed and satisfied the building permit review.
- (8) All licensing, operating, and other fees due and payable to operate a marijuana establishment as determined by the city manager or his or her designee.
- (9) Any additional document(s) or information reasonably requested by either the city manager or his or her designee or by the selection committee.
- (10) A business plan, including the following:
 - a. A general description of the business, a market analysis, including an analysis of the Broomfield market, and a marketing plan.
 - b. Details of overall management and operations including hours of operation, curricula vitae of all principal officers and managers, and staffing plans, including any specific commitments of the licensee toward staffing the establishment with a diverse workforce of Broomfield residents, planned recruitment process for filling positions, and benefits packages for all levels of staff.
 - c. Financial information demonstrating a formalized relationship with an established financial institution, demonstrated liquid assets of \$250,000.00 in the applicant's control, financial projections including assumptions used, and sources of funds.
 - d. A description of the applicant's experience operating licensed marijuana businesses in Colorado or elsewhere, including compliance with state and local laws or violations or alleged violations pending determination.
 - e. An indication of whether the marijuana store would sell recreational or both recreational and medical marijuana.

5-42-110 - Initial and subsequent applications.

- (A) Initial applications. Applications for the issuance of a new retail marijuana store license or for both a retail marijuana store and medical marijuana center license shall be accepted in the office of the city clerk beginning 60 days after the effective date of this chapter and for a period of 60 days after that time for purposes of applying for the first approved license(s) to operate a marijuana store in the city. The city clerk may, in its discretion, increase the time periods set for acceptance of initial applications.
- (B) Subsequent applications. When a marijuana store license becomes available, the city clerk shall post notice of such availability on the city's website, opening a 60-day application period for the filing and acceptance of new applications. The city clerk will specify the start and end date and time of the application period, and may, in its discretion, increase the time period for acceptance of applications. This notice shall be posted by the city clerk at reasonable intervals, but no less than annually, until all available licenses are issued.
- (C) Applications will be deemed submitted only when complete, pursuant to the requirements in this chapter, and when accompanied by the applicable fees.

- (D) The clerk shall inform the applicant in writing of its determination of whether or not the application is complete within 35 days of its receipt of the application. Such determination shall be expressed in writing and shall identify those matters that prevent the determination of completeness or that shall inform that the application has been accepted as being complete. An applicant who has been denied a determination of completeness may resubmit the application to correct any deficiencies in completeness if the resubmittal occurs within the deadline for all applications. If less than 35 days are left in the application acceptance period when an initial submittal or resubmittal occurs, the clerk may still have 35 days to determine completeness. This does not extend the application acceptance period.
- (E) Completed applications will be sent by the clerk to the selection committee for evaluation, pursuant to section 5-42-150, B.M.C.

5-42-120 - Application for new license or permit; generally.

- (A) Local marijuana establishment licenses can only be issued after the applicant(s) has obtained the corresponding conditional state marijuana license(s). Conditional state licenses will only meet this requirement if the only remaining condition on that license is the issuance of a local license. The issuance of any local licenses issued pursuant to this chapter is specifically conditioned on the applicant/licensee obtaining and maintaining a valid license of the same type for the same activity, at the same location issued by the state licensing authority.
- (B) A local marijuana establishment license may be requested by, without limitation, any owner or person having an interest in the property on which the marijuana business is proposed to be located. The applicant has the burden of proof to demonstrate the use fully complies with all state and local standards and regulations and meets the criteria for approval.
- (C) No person or entity shall apply for more than one license in any location in the city.
- (D) No owner of any business applying for a license or in possession of a license within the city may apply for, or be an owner of, any other business entity applying for another license within the city.
- (E) The licensing authority is authorized to issue a total of three licenses for the purpose of regulating marijuana establishments subject to the provisions and restrictions provided in this chapter. Two additional licenses may be added by the licensing authority starting 12 months after the initial three licenses are issued, up to a total of five.
- (F) All applications for new licenses for the sale of marijuana products shall be on forms provided by the city clerk's office and may be obtained from and shall be filed with the city clerk. Each application shall be accompanied by such further information as may reasonably be required by the state, licensing authority, city manager or his or her designee, or the selection committee.
- (G) The city clerk shall publish the public aspects of all applications deemed complete, pursuant to the Colorado Open Records Act, on the city's website.

- (H) There shall be a procedure for public comment on each of the published applications. All public comment received prior to the decision on the application shall be collected by the city clerk and provided to the selection committee for consideration.

5-42-130 - Application screening—grounds for denial of the initial application.

In addition to the prohibitions on persons as licensees found in C.R.S. § 44-11-306 and C.R.S. § 44-12-305, each of the following, in and of itself, constitutes full and adequate grounds for denying an application for a license:

- (A) The applicant has not paid all applicable fees required by this chapter;
- (B) The application is not complete;
- (C) The applicant has not complied with or does not meet the requirements of this chapter, state statutes, the Colorado Marijuana Rules, any rules or regulations adopted pursuant thereto, or any other applicable state or local law or regulation;
- (D) The applicant has been denied a license from the state in regard to the concurrent application;
- (E) The application contains false, misleading, or incomplete information;
- (F) The location proposed for licensing does not comply with all zoning and land use laws of the city;
- (G) The applicant, applicant's principal officers, directors, members, or owners who now, or at any time in the past, have had 25% or more ownership in any marijuana business have had, or the business has had, a marijuana license suspended or revoked by the State of Colorado or any other state, or any local jurisdiction's local licensing authority or other controlling authority.

5-42-140 - Investigation, fingerprinting of applicant.

- (A) Prior to the acceptance of applications for a new license, transfer of ownership, change of corporate structure, or permit as outlined in C.R.S. § 44-10-101, *et seq.*, and the Colorado Marijuana Rules, the following individuals shall present themselves to the police department to be fingerprinted and shall pay the costs thereof:
 - (1) If the applicant is a natural person, that person;
 - (2) If the applicant is a partnership, all of the partners;
 - (3) If the applicant is a corporation, both the officers and directors, together with any person owning more than 10% of the stock thereof; and
 - (4) Irrespective of the identity of the applicant, the manager of the proposed establishment.
- (B) The investigator shall acquire such information, either upon direction of the authority or on their own initiative, as necessary to properly carry out the provisions of C.R.S. § 44-10-101, *et seq.*, and the Colorado Marijuana Rules, the regulations promulgated thereunder, this chapter, and the rules and regulations of the licensing authority and local licensing authority.

5-42-150 - Application evaluation.

- (A) Upon receipt of a completed application from the city clerk, the selection committee shall evaluate each application based on the general criteria listed below. Applications are reviewed on their own merits and not in comparison to other applications.
- (B) The following criteria will be used to evaluate applications:
 - (1) The applicant's experience operating a licensed marijuana business in Colorado or any other state, including compliance with state and local laws, violations, or alleged violations thereof;
 - (2) The impact of the proposed establishment on the neighborhood surrounding the proposed location, the community as a whole, and the natural environment, and the applicant's commitment to take specific measures to mitigate such impacts;
 - (3) The convenience of the proposed location to the residents of the city, considering any synergies, redundancies, or conflicts posed by the proposed locations of other marijuana store applications;
 - (4) The compatibility of the proposed location with the surrounding properties, including aesthetic considerations;
 - (5) The apparent conformity of the application to the zoning of the proposed location, as an initial matter and with the understanding that full land use review must be completed to obtain a license;
 - (6) The diversity of retail choices the applications would bring to the city;
 - (7) The applicant's ability to demonstrate, through a business plan, its ability to operate and develop the proposed establishment in a highly regulated industry;
 - (8) The applicant's demonstrated ability to operate an effective and lawful analogous business;
 - (9) Diversity of ownership of marijuana industry licenses or permits, including consideration of ownership of any active licenses or establishments located in the United States;
 - (10) The quality and detail of the proposed security plan, business plan, community outreach plan, sustainability plan, and other application materials;
 - (11) The degree of detail and completeness provided in the application and the extent to which the application includes false or misleading information;
 - (12) Community benefit including providing a living wage and employee benefits and compliance with local, state, and federal employee non-discrimination policies;
 - (13) Additional information that demonstrates the ability to operate in a safe and responsible manner in the city, including, without limitation, a review of the quality and thoroughness of application materials, connection to Broomfield, Broomfield citizen public comment, ability to serve Broomfield, familiarity with the city, and innovative business models consistent with the Broomfield community; and
 - (14) Any other unique benefits the application would present to the inhabitants of the city and any other factors that may be relevant.
- (C) The selection committee shall make its evaluations based on a multi-factor balancing test, considering the totality of the circumstances, with the overall goal of selecting those

applications that provide the greatest benefit to the city and its inhabitants by offering and maintaining the safest environment, the best service, and the fewest negative impacts to the community.

- (D) The committee shall issue a written report stating the determinations of the committee and a brief explanation of the basis thereof. This report shall be added to the application file.
- (E) The selection committee shall, based upon its written report and upon the number of applications received and evaluated, determine those applications that have successfully met or exceeded the criteria required by this chapter and therefore will go through the lottery process.

5-42-160 - Lottery.

- (A) The applications identified by the selection committee as meeting or exceeding the criteria required by this chapter shall be entered into a lottery process.
- (B) A public random lottery will be conducted from among the applications chosen by the selection committee to determine which applicants will be awarded the opportunity for approval of a license.
 - (1) Public notice. The city clerk shall publish notice of the public lottery.
 - (2) Conduct of the lottery. The city will conduct a drawing from among the qualified applicants, in a public forum, to determine which applicants shall be awarded the opportunity to obtain a license. They will use a process by which the names of the applicants are shielded from view, and through which each qualified applicant has an equal chance of being selected.
 - (3) The first business selected via the lottery has first priority for a license with subsequent priority following numerical positions, i.e., 1st selected has first priority, 2nd selected has next priority, and so forth. If proposed locations in subsequent applications selected via the lottery conflict with the state or local set backs, those applicants have the opportunity to find a different location within 60 days that complies with required setbacks prior to the city opening the available license to those businesses who follow in priority. The clerk may extend this time for good cause.
 - (4) The selected applicants must complete the process to be issued a license. If any applicant does not complete the process and there is an available license, the clerk will contact the applicants in the order of lottery selection to move through the post-lottery stages of the licensing process.
 - (5) All applications accepted by the selection committee will remain active/available until all available licenses are issued.
 - (6) After all available licenses are issued, the process is closed and any application will be retained for file purpose only.

5-42-170 - Application and license fees.

- (A) The application and license fees shall be set by the city manager or his or her designee.

- (B) An applicant shall pay the application fee at the time of submitting its application. The purpose of the application fee is to cover the city's cost of administration of this chapter, including review of the application.
- (C) An applicant shall pay the annual license fee as set by the city manager or his or her designee prior to issuance of a license. The purpose of the license fee is to cover the city's cost of administration of this chapter, licensee education, inspections of licensed premises, regular compliance checks, documentation of violations, and prosecutions of violations of licenses.
- (D) As part of the annual budget process, license and application fees charged by the city should be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the city in connection with the adoption, administration, and enforcement of this chapter.

5-42-180 - Collection of fees generally.

In addition to any other remedy provided by this chapter, the city shall have the right to recover all sums due and owing hereunder by any civil remedy available at law.

5-42-190 - License term, renewal, and expiration.

- (A) The term of a license is one year and will expire on the date stated in the license.
- (B) All renewal applications for marijuana licenses shall be submitted to the city clerk on the prescribed forms no later than 45 days prior to the date on which the license expires, except that the city clerk, for good cause, may waive the time requirement set forth in this subsection. The forms shall be accompanied by all the required fees and such additional materials as the city manager or his or her designee deems necessary to carry out the provisions of C.R.S. § 44-10-101, *et seq.*, the Colorado Marijuana Rules, this chapter, and all applicable regulations.
- (C) No renewal application shall be accepted by the city clerk that is not complete in every detail. Any application mailed to or deposited with the city clerk that, upon examination, is found to have some omission or error, shall be returned to the applicant for completion or correction without any action on the part of the city clerk.
- (D) The city manager or his or her designee may, in their discretion, schedule a hearing on the application for renewal before the local licensing authority if the licensee has had complaints filed against it, if the licensee has a history of violation(s), or if the licensee has committed any unlawful acts, and/or if there are allegations against the licensee that would constitute good cause as that term is defined herein.
- (E) In the event that a hearing is scheduled, notice of such hearing shall be posted on the licensed premises for a period of 10 days prior to the hearing and the applicant shall be notified of such hearing at least 10 days prior to the hearing.
- (F) The hearing shall comport with the other provisions of these regulations concerning violation hearings.

- (G) All renewal applications shall be reviewed and evaluated by the licensing authority if no hearing is scheduled. The licensing authority may refuse to renew any license for good cause as that term is defined in this chapter and any applicable local law or regulation.
- (H) If an applicant has been denied renewal of a local marijuana license(s), then that applicant shall be required to wait 12 months before re-applying for a local marijuana establishment license(s) in the city, unless waived by the licensing authority.
- (I) Notwithstanding the provisions of the previous subsections of these regulations, a licensee whose license has expired for not more than 90 days may file a late renewal application upon the payment of a nonrefundable late license fee set by the city manager or his or her designee to the licensing authority. A licensee who files a late renewal application and pays the requisite fee may continue to operate until the licensing authority has taken final action to approve or deny the licensee's late renewal application.
- (J) The licensing authority shall not accept a late renewal application more than 90 days after the expiration of the licensee's permanent annual license. A licensee whose license has expired shall not, under any circumstances, distribute, or sell any marijuana until a new required license has been obtained.

5-42-200 - License display required.

The Licensee shall conspicuously display the local and the state issued licenses at all times on the licensed premises.

5-42-210 - Warning sign to be displayed.

Each licensee shall post and keep visible at all times to the public in a conspicuous place on the licensed premises a sign furnished by the city clerk that reads as follows:

WARNING! BROOMFIELD POLICE MUST
BE NOTIFIED OF ALL DISTURBANCES OR CRIMINAL CONDUCT
IN THIS ESTABLISHMENT OR ON THE GROUNDS THAT ARE
A PART OF THE ESTABLISHMENT.
SECTION 5-42-250,
BROOMFIELD MUNICIPAL CODE.

5-42-220 - Health educational sign to be displayed.

Each licensee shall post and keep visible at all times to the public, in a conspicuous place on the licensed premises, a sign furnished by Broomfield Public Health that educates consumers on possible ill health impacts from the use of marijuana.

5-42-230 - Marijuana delivery.

- (A) A licensed medical marijuana store located and licensed in the city with a valid marijuana delivery permit issued by the State of Colorado may deliver medical marijuana and medical marijuana-infused products to private residences in the city, provided that such delivery complies with state law.
- (B) A licensed retail marijuana store located and licensed in the city with a valid marijuana delivery permit issued by the State of Colorado may deliver retail marijuana and retail marijuana-infused products to private residences in the city, provided that such delivery satisfies the requirements set forth in state law.
- (C) For every transfer of regulated marijuana through delivery service, the following requirements must be met:
 - (1) Delivery drivers must use a personal video device to document the transaction, including the consumer's facial features with sufficient clarity to establish their identity, and use identification scanners to verify the age of the consumer and log the transaction;
 - (2) Delivery drivers must shut off, lock and secure the delivery vehicle after exiting the vehicle for the duration of any delivery;
 - (3) Delivery vehicles must have and drivers must utilize secure locations within the vehicle to store marijuana products and money;
 - (4) Delivery drivers must have a valid Colorado Driver's License and a Colorado Med Employee License indicating the driver has completed a state background check;
 - (5) All delivery drivers must carry valid automobile liability insurance which shall be for a combined single limit for bodily injury and property damage liability of not less than one million dollars (\$1,000,000); and
 - (6) All drivers must be trained on and utilize protocols for events that could occur during delivery such as vehicle accidents or other events that may cause the driver to leave the vehicle for a longer period than for the intended marijuana delivery.
- (D) Other than as set forth in this section, no other delivery of marijuana is permitted in the city.

5-42-240 - Marijuana sales; walk-up and drive through.

- (A) Retail and medical marijuana businesses, licensed by both the city and the state, may serve customers through a walk-up window or drive-up window as permitted by the State of Colorado. If a licensed business intends to permit walk-up and/or drive through sales, this must be included in the business plan submitted to the city in the application process.
- (B) Order and identification requirements:
 - (1) Prior to transferring marijuana to a customer, the marijuana establishment must ensure that the consumer is 21 years of age or older by inspecting the consumer's identification in the same manner as described in section 5-42-250(F), B.M.C.
 - (2) The marijuana store may accept telephone or online orders or may accept orders from the consumer at the walk-up window or drive-up window, to the extent allowed under state law.

- (3) All orders received through a walk-up window or a drive through window must be placed by the customer from a menu. The marijuana store may not display marijuana at the walk-up or drive through window.
 - (4) Delivery windows for walk-up sales must be at a separate location on the premises than those for drive-through sales.
- (C) Video surveillance requirements. For every transfer of regulated marijuana through either a walk-up window or drive-up window, the marijuana store's video surveillance must record the consumer's facial features with sufficient clarity to establish their identity (and consumer's vehicle in the event of drive-up window), and must record the licensee verifying the consumer's identification and completion of the transaction through the transfer of regulated marijuana.

5-42-250 - Operational requirements.

All marijuana establishments shall comply with the applicable state and local laws, rules and regulations, as amended from time to time, including as stated in the Code of Colorado Regulations 1 CCR 212-3. In addition, licensees shall comply with the following local operational regulations. Failure to comply with any state or local law or regulation or any of the following operational regulations may be grounds to suspend or revoke any license and impose civil penalties where applicable.

- (A) Minimum standards. A marijuana establishment shall not be permitted to operate until the licensee has acquired all of the necessary permits, licenses, and authorizations, including a certificate of occupancy, and demonstrates implementation of the requirements of this section.
- (B) Compliance with plans. Marijuana establishments shall fully comply with the security plan, community outreach plan, and any sustainability, employment, or other plan approved by the authority for the location.
- (C) Video surveillance. Marijuana establishments are required to install a video surveillance system satisfying the minimum standards described below, in addition to the state requirements set forth in 1 CCR 212-3, as amended:
 - (1) All surveillance recordings shall be retained for a minimum of 60 days and shall be in a digital format that can be easily accessed for viewing and that ensures authentication of the recording as being legitimately captured without alterations.
 - (2) In addition to maintaining surveillance recordings in a locked area on the licensed premises, a copy of the surveillance recordings must be stored at a secure off-site location or through a network "cloud" service that provides on-demand access to the recordings. The off-site location or network service provider shall be included in the security plan submitted to the city and updated within 72 hours of any change to the location or provider.
 - (3) Video surveillance records and recordings must be made available immediately upon request of the licensing authority, local licensing authority, or police department.
 - (4) If video surveillance or storage equipment becomes inoperable, or storage network service becomes disabled, the marijuana establishment shall cease all transactions

and require all patrons to exit the building until the equipment or network service is made operable.

- (D) Security alarm system. All marijuana establishments shall install, maintain, and use a professionally monitored security alarm system meeting the following requirements:
- (1) The system shall provide coverage of all facility entrances and exits, rooms with exterior windows, rooms with exterior walls or walls shared with other building tenants, roof hatches, skylights, and storage rooms containing safes or vaults;
 - (2) The system shall include at least one silent holdup or duress alarm that can be manually triggered in case of emergency;
 - (3) The alarm system must be equipped with a failure notification and a battery backup system sufficient to support a minimum of four hours in the event of a power outage;
 - (4) The alarm system must be monitored by a company that is staffed 24 hours a day, seven days a week. The security plan submitted to the city shall identify the company monitoring the alarm, including contact information, and shall be updated within 72 hours in the event the monitoring company is changed; and
 - (5) The licensee shall maintain for a period of three years reports of any incidents triggering an alarm, and such reports shall be made available to the city during any inspection of the facility.
- (E) Secured storage. All marijuana establishments must install a safe or vault for storage of cash on the premises and a separate safe or vault or equivalent secured fixture for storage of marijuana on the premises when the business is closed to the public. The safes or vaults must be incorporated into the building structure or secured to the structure in such a manner as to prevent removal.
- (F) Proof of age. The business shall verify the proof of age of every person entering the licensed premises or completing a sale therein, by a form of valid identification listed in 1 CCR 212-3.3-405(C), as amended. The business shall verify the proof of age of every person entering the business with an electronic identification scanner. An electronic identification scanner is a device that is capable of quickly and reliably confirming the validity of an identification using computer processes. If the proof of age scanner becomes inoperable, the equipment shall be replaced within seven days, and the establishment may not conduct or permit any employee to conduct any sales transactions while the electronic identification scanner or equipment is inoperable.
- (G) Odor management. For all marijuana establishments, the odor of marijuana must not be perceptible to an ordinary person at the exterior of the building of the licensed premises or in any space adjoining the licensed premises.
- (H) Hours of operation. Marijuana establishments may only be open to the public between the hours of 8:00 a.m. and 10:00 p.m., daily. No sale, delivery, or other distribution may occur outside of those hours. Hours of operation must be posted at the main entry of the store.
- (I) Documents to be displayed. All marijuana and sales tax licenses shall be conspicuously posted inside the establishment near the main entrance.

- (J) Contact information for a business representative that the public may contact with concerns or comments shall be conspicuously posted inside the establishment near the main entrance.
- (K) Registered manager. No marijuana establishment shall be operated or managed by any person other than the licensee, with the exception of a manager registered with the authority. Such licensee or manager shall be on the premises and responsible for all activities within the licensed business during all times when the business is open. In the event the licensee intends to employ a manager who was not identified on the license application, the licensee shall report the name of such manager to the licensing authority, and such manager shall submit to the licensing authority, at least 28 days prior to serving as a manager, an application containing all of the information required for a manager by this chapter on a license application, and shall submit the requisite fees. A licensee shall report to the licensing authority any change in managers at least 28 days prior to employing an additional manager, and no more than five days after a manager is released from such position. Notwithstanding the foregoing, when a licensee reports to the licensing authority as a new manager a person who holds an active occupational license from the state licensing authority as a key employee and provides proof thereof in the application, the person may begin serving as a manager of the licensee immediately and until such time as the licensing authority acts on the application. Any timely report of a change in manager may be approved administratively. However, the authority may refuse to accept any person's registration as a manager upon a determination that the person's record or reputation is unsatisfactory to ensure safe, lawful, and effective management of the marijuana establishment.
- (L) Inspections.
 - (1) Grant of authorization. By signing and submitting a license application, the applicant/licensee certifies that the applicant/licensee has received permission from the property owner to allow inspections as may be required under state or local licensing law. In addition, the licensee authorizes city staff designated by the city manager to enter upon and inspect the premises upon presentation of official credentials. These inspections are part of the routine policy of inspection and enforcement of these regulations for the purpose of protecting the public safety, individuals operating and using the services of the marijuana establishment, and the adjoining properties and neighborhood. This rule shall not limit any inspection authority authorized under any other provision of law or regulation, including those of police, fire, building, and code enforcement officials.
 - (2) Initial inspection. The city shall inspect all marijuana establishments prior to final issuance of a license to verify that the facilities are constructed and can be operated in accordance with the application submitted and the requirements of laws of the city and the state. The initial inspection shall occur after the marijuana establishment is ready for operation, but a license that has not yet become final shall not entitle the licensee to allow marijuana to be present on the premises before the inspection is complete.

- (3) Regular inspections. At a minimum, the city shall be authorized to perform regular inspections on a quarterly basis during the first year following licensure, and on a yearly basis prior to license renewal following the first year of operation.
 - (4) Random inspections. The regular licensing inspection procedures described shall not prevent the city from inspecting marijuana establishments at random intervals and without advance notice.
 - (5) Inspection of records. Upon request, the licensee or manager on duty shall retrieve and provide any relevant business records pertaining to the inspection, including but not limited to, security camera recordings, marijuana inventory manifests, and copies of invoices and receipts. The city may require any licensee to furnish such information as it considers necessary for the proper administration of these regulations.
- (M) Reporting of source, quantity, and sales. The records to be maintained by each marijuana establishment shall include the source and quantity of any marijuana distributed, produced, or possessed within or from the premises. Such reports shall include the following information, at a minimum, for both acquisitions from wholesalers and sales transactions:
- (1) Date, weight, type of marijuana, and dollar amount or other consideration of transaction;
 - (2) For wholesale transactions, the sales and use tax license number of the seller from the State of Colorado and city, if any; and
 - (3) The amount of marijuana within the marijuana establishment. Each year, with the licensee's application for license renewal, the licensee shall submit a report to the authority with this information for the prior operational year. The secretary of the authority may designate the form of the report.
- (N) Reporting of criminal activity. Reports of all criminal activities or attempts of violation of any law at the marijuana establishment, including the curtilage surrounding the licensed premises and the designated parking area, or related in any way to the marijuana business, shall be reported to the police department immediately and to the city manager or his or her designee by the licensee within 12 hours of occurrence. Additionally, any violation of any law related in any way to the marijuana business by any licensee, controlling beneficial owner, manager, principal officer, agent, or applicant of the marijuana business shall be reported to the city manager or his or her designee within 72 hours.
- (O) Disposal of marijuana and marijuana byproducts. All marijuana and any product containing a usable form of marijuana must be made unusable and unrecognizable prior to removal from the business in compliance with all applicable laws. This provision shall not apply to licensed law enforcement, including, without limitation, the police department and local fire district.
- (P) The manager of a marijuana business is required to respond by phone or email within 24 hours of contact by a city official concerning its marijuana business at the phone number or email address provided to the city as the contact for the business. Each 24 hour period during which an owner or manager does not respond to the city official shall be considered a separate violation.

- (Q) Confiscation of Fraudulent IDs. If a licensee or an employee of a marijuana business has reasonable cause to believe that person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to enter a marijuana business or to obtain any marijuana or marijuana product, the licensee or employee shall be authorized to confiscate such fraudulent proof of age. Within 72 hours, any fraudulent proof of age confiscated shall be turned over to the Broomfield Police Department.
- (R) Signs and Advertising.
- (1) Marijuana establishments are prohibited from using the terms “pharmacy,” “pharmacist,” “pharmaceutical,” “RX,” or any other similar variation of such terms as their corporate, business, or “doing business as” name, so as to prevent a reasonable person from concluding such business is involved in the practice of pharmacy, as regulated by Pharmaceuticals and Pharmacists, C.R.S. Article 22 of Chapter 12. Additionally, no marijuana establishment may use any of the above terms or any similar variation thereof in any of its signs, placards, promotional, or advertising materials. Additionally, no signs that mimic or allude to pharmacy or medical related symbols, including to but not limited to medical style crosses regardless of proportions or colors used.
 - (2) Any person or premises licensed as a marijuana establishment shall comply with all city ordinances regulating signs and advertising. In addition, no marijuana establishment shall use any advertising material that is misleading, deceptive, false, or that, as evidenced either by the content of the advertising material or the medium or the manner in which the advertising is disseminated, is designed to appeal to persons under eighteen (18) years of age.
 - (3) Except as otherwise provided in this subsection 3, no marijuana establishment shall advertise any marijuana product anywhere in the city where the advertisement is visible to members of the public from any street, sidewalk, park, or other public place, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the zoning code; any sign mounted on a vehicle; any hand-held or other portable sign; or any handbill, leaflet, or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property without the consent of the property owner. The prohibition set forth in this section shall not apply to:
 - a. Any sign located on the same zone lot as a marijuana establishment which exists solely for the purpose of identifying the location of the marijuana establishment and which otherwise complies with the city’s zoning requirements and any other applicable city laws and regulations; or
 - b. Any advertisement contained within a newspaper, magazine, or other periodical of general circulation within the city; or
 - c. Advertising which is purely incidental to sponsorship of a charitable event by a marijuana establishment.
 - (4) For purposes of the subsection, the terms “advertise,” “advertising,” or “advertisement,” mean the act of drawing the public’s attention.

5-42-260 - Unlawful Acts.

- (A) Any person who pleads guilty or no contest to or who, after trial, is found guilty of violating any of the following shall be subject to penalties pursuant to the general penalties set forth in section 1-12, B.M.C. It is unlawful for any person to:
- (1) Be on or within the premises of any marijuana establishment, if such person is under 21 years of age;
 - (2) Permit or allow any person under 21 years of age to enter or remain on or within the premises of any marijuana establishment; it is presumed any person is aware of the age of all people on the premises if identification is not specifically checked at the entry to the building;
 - (3) Cultivate, distribute, produce, smoke, use, or ingest marijuana openly or publicly in a place open to the general public;
 - (4) Possess or operate a marijuana business in violation of this chapter;
 - (5) Produce, distribute, or possess more marijuana than allowed in this chapter, or than disclosed in the application to the State of Colorado for a marijuana business license, or other applicable law;
 - (6) Fail to report to the police department any disturbances or criminal activity occurring at the location, on the licensed premises, or within the licensed premises set forth on the license of the license holder. This duty applies to the holder of a marijuana establishment license issued pursuant to this article or any manager or employer of such license holder. For the purposes of this subsection, the terms "location," "premises," and "licensed premises" shall have that meaning and definition set forth in C.R.S. § 44-10-103, and the term "report" shall mean to either contact the non-emergency line for the police department or 911 immediately;
 - (7) Smoke, use, or ingest on the premises of the marijuana establishment any marijuana, fermented malt beverage, malt, vinous, and spirituous liquor, or a controlled substance; except for employees or owners of the business ingesting prescribed medication in compliance with the directions on a legal prescription for the person from a doctor with prescription writing privileges;
 - (8) Operate or be in physical control of any marijuana establishment while impaired by any intoxicant, including but not limited to marijuana, fermented malt beverage, malt, vinous, and spirituous liquor, or a controlled substance;
 - (9) Purchase marijuana in the city from any person not properly licensed to sell marijuana pursuant to section 5-42-040, B.M.C.;
 - (10) Possess extraction vessels, and butane, propane, compressed CO₂, ethanol, isopropanol, acetone, heptane, hexane, pentane, or any other volatile materials used in the production of solvent-based marijuana concentrate, in the same premise as marijuana;
 - (11) Distribute, or contract to distribute, marijuana using any freight or package service, community rideshare, or other commercial transportation network, including the United States Postal Service;

- (12) Distribute or sell marijuana within a marijuana establishment to any person who shows visible signs of intoxication from alcohol, marijuana, or other drugs;
- (13) Violate or permit any person to violate any provision of this article or any condition of approval placed upon a license granted pursuant to this article, or any law, rule, or regulation applicable to the use of marijuana or the operation of a marijuana establishment;
- (14) Operate a marijuana business in a manner that is not consistent with the items disclosed in the application for the marijuana business, or be in violation of any plan made part of the license application;
- (15) Refuse or fail to provide video surveillance footage to the police department, the city manager or his or her designee, or the local licensing authority in connection with an open criminal or license violation investigation, or to refuse to allow inspection of a marijuana establishment pursuant to section 5-42-250(L), B.M.C. Any licensee, owner, business manager, or operator of a marijuana establishment, or the owner of the property where a marijuana establishment is located, may be charged with this violation;
- (16) Store or keep marijuana intended for sale or distribution by the licensee in any place outside of the licensed business premises;
- (17) Sell, give, or distribute marijuana to persons under the age of 21;
- (18) Sell more than one ounce of retail marijuana or its equivalent in retail marijuana products, including retail marijuana concentrate during a single transaction to a person, except for non-edible, non-psychoactive retail marijuana products, including ointments, lotions, balms, and other non-transdermal topical products.
- (19) Give away, dispense, or otherwise distribute marijuana for free;
- (20) Knowingly conduct or permit any employee to conduct any sales transactions when the video surveillance system or equipment is inoperable;
- (21) Operate a marijuana establishment without a license from the city and the state;
- (22) Operate a marijuana establishment in a manner that is not consistent with the application, or is in violation of any plan or condition made part of the license application;
- (23) Operate a marijuana establishment without obtaining and passing all building inspections and obtaining all permits required by the city;
- (24) Operate a marijuana establishment in violation of any building, fire, zoning, plumbing, electrical, or mechanical codes as adopted and amended by the city;
- (25) Modify or allow any modification to the licensed premises without approval of the applicable city department, city clerk, or local licensing authority;
- (26) Use or display a marijuana establishment license at a different location or for a different business entity than in the location and business entity disclosed on the application for the issued license;
- (27) Own or manage a marijuana establishment in which another person cultivates, produces, distributes, or possesses marijuana; in a manner that is a violation of this chapter or any other applicable law;

- (28) Make any changes, or for the licensee to allow any changes, to the items included in the plans submitted with the license application and approved by the city, or the individuals identified in the application, without prior approval of the city;
 - (29) Advertise or publish materials, honor coupons, sell or give away products, or display signs that are in violation of this code or the State of Colorado;
 - (30) Violate any provision of this code or any condition of an approval granted pursuant to this code, or any law, rule, or regulation applicable to the use of marijuana or the operation of a marijuana business;
 - (31) Permit any other person to violate any provision of this code or any condition of an approval granted pursuant to this code, or any law, rule, or regulation applicable to the use of marijuana or the operation of a marijuana business;
 - (32) Fail to confiscate fraudulent proof of age and notify the police department. It shall be an affirmative defense to failure to confiscate the fraudulent proof of age if attempts to confiscate a fraudulent proof of age caused a reasonable person to believe the act created a threat to any person;
 - (33) Fail to post the premises during a suspension;
 - (34) Distribute any consumable product, other than bottled water, that is not a marijuana-infused product.
 - (35) Employ or allow a business manager that has not been properly registered by the city pursuant to section 5-42-250(K), B.M.C.; or
 - (36) Operate or possess a marijuana establishment in violation of this chapter, any ordinance of the city, or any state law or regulation.
- (B) Prima facie evidence. Prima facie indicia of impairment or being under the influence of marijuana includes bloodshot eyes, watery eyes, eyelid tremors, green particulate on tongue, dilated pupils, mental confusion, slowed responses, rigid muscles, body tremors, or dry mouth, or any other indicators of impairment.

5-42-270 - Change in status of license, management, employees.

- (A) A license granted under the provisions of this chapter shall not be transferable to any other person except as provided in this chapter.
- (B) Transfer of ownership. A transfer of ownership of any marijuana store license issued pursuant to this article shall be prohibited for two years after the date the license is issued by the city, except in the event of the death of a licensee who was a sole proprietor, and when transfer of ownership to the licensee's heir is requested. Any request for transfer of ownership of any license issued more than two years after the date the license was issued, or in the event of death of the sole proprietor and a request to transfer ownership to the sole proprietor's heir, shall require the filing of an application and payment of the requisite fees, and shall be subject to all licensing requirements and shall be heard and approved or denied by the local licensing authority.
- (C) Change of corporate structure. A change of corporate structure of any marijuana store that results in any of the changes in subsections (1) through (3) below shall require the filing of an application and payment of the requisite fees, and shall be subject to all

- requirements of the post-award licensing process. A change of corporate structure shall be heard and approved or denied by the local licensing authority.
- (1) Any transfer or assignment of ten percent or more of the capital stock of any corporation, or ten percent or more of the ownership interests of any limited partnership interest in any year, or transfer of a controlling interest regardless of size.
 - (2) Any change in the officers or directors of a corporation that involves the addition or substitution of individual(s) who was not previously an officer or director of the corporation during a period of time that the corporation held the license.
 - (3) Any transfer of the capital stock of any corporation, or transfer of any limited partnership interest in any general partnership of a limited partnership, or transfer of any limited liability company interest in a limited liability company of any kind, joint venture or business entity that results in any individual owning more than ten percent of an ownership interest in the business entity if that individual's ownership interest did not exceed ten percent prior to the transfer.
 - (4) A change of corporate structure that results in any transfer or assignment of less than ten percent of the capital stock of any corporation or less than ten percent of the ownership interests of any limited partnership interest in any year to a person who currently has an interest in the business, and that does not result in a change of controlling interest, shall not require an application for change of corporate structure.
- (D) No application for transfer of ownership or change in corporate structure may be approved by the local licensing authority until all city and state occupational taxes, city and state sales and use taxes, excise taxes, any fines, penalties, and interest assessed against or imposed upon such licensee in relation to operation of the licensed business are paid in full.
- (E) In determining whether to permit a transfer of ownership, the local licensing authority may consider the requirements of state statutes and the Colorado Marijuana Rules. In addition, no application for a transfer of ownership will be considered by the local licensing authority if, at the time of such application, the licensee is under a notice of violation or other unlawful acts issued by either the local licensing authority or the state licensing authority.
- (F) A licensee of a license issued pursuant to this chapter shall report each transfer or change of financial interest in the license and/or the licensee to the local licensing authority prior to any such transfer or change pursuant to and in accordance with the provisions of state statutes and the Colorado Marijuana Rules. A report shall be required for transfers of capital stock of any corporation regardless of size, for transfers of member interests of any limited liability company regardless of size, and for any transfer of an interest in a partnership or other entity or association regardless of size.
- (G) Any request for transfer of ownership shall be filed with the city clerk on the provided form. All requests for transfer of ownership shall be reviewed by the local licensing authority. The licensee shall provide any requested information to the local licensing authority for their review. The local licensing authority shall either grant or deny the transfer of ownership based on a review of the application, history of the new ownership

and any other information requested by the local licensing authority. In determining whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of the Colorado state laws and all regulations and requirements set forth in this chapter.

- (H) A marijuana establishment shall notify the local licensing authority in writing within ten days after an owner, officer, agent, or employee ceases to work at, manage, own, or otherwise be associated with the operation. The owner, officer, or employee shall surrender his or her identification card to the state licensing authority on or before the date of notification. A licensed operation shall also notify the local licensing authority in writing of the name, address, and date of birth of an owner, officer, manager, or employee within ten days of the new owner, officer, or employee begins working at, managing, owning, or being associated with the operation.
- (I) A licensee shall notify the local licensing authority in writing if its state license of the same type for the same type of activity at the same location as that issued by the local licensing authority has been denied, expired, renewed, revoked, or transferred within three days of the change.
- (J) A licensee shall notify the local licensing authority in writing if it has sought bankruptcy protection.

5-42-280 - Compliance monitoring.

- (A) The city shall monitor compliance with this chapter, as it deems appropriate.
- (B) The city shall have the discretion to consider previous compliance check history of a licensee in determining how frequently to conduct compliance checks of a licensee with respect to individual licensees.
- (C) Compliance checks shall be conducted as the city deems appropriate so as to allow the city to determine, at a minimum, if the marijuana product retailer is conducting business in a manner that complies with laws regulating access to marijuana products.
- (D) It shall not be a violation of the law for a person under the minimum legal sale age for marijuana purchases or possession to purchase or possess marijuana products if the underage person is participating in a compliance check supervised by any person authorized by the city or the State of Colorado to conduct compliance monitoring.

5-42-290 - Post-license hearing; local licensing authority.

The local licensing authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the local licensing authority is authorized to conduct. It is unlawful for any person to fail to comply with any subpoena issued by the authority in the proper conduct of its hearings. The municipal court of the city shall enforce the subpoenas of the local licensing authority and, upon good cause shown, shall enter its orders compelling witnesses to attend and testify or produce books, records, or other evidence, and shall impose penalties of punishment for contempt in case of failure to comply with such orders.

5-42-300 - Penalties, suspension, and revocation of license.

- (A) The local licensing authority shall hear all actions relating to the suspension or revocation of licenses pursuant to this chapter. The local licensing authority shall have the authority to impose remedial sanctions for violations as well as suspend or revoke the license in its entirety. Any proceedings involving suspension, revocation, fines, or other sanction shall comply with C.R.S. § 44-10-901. In the event of a conflict between this section and C.R.S. § 44-10-901 controls.
- (B) The city shall commence suspension or revocation proceedings by petitioning the local licensing authority to issue an order to the licensee to show cause why the licensee's license(s) should not be suspended or revoked. The local licensing authority shall issue such an order to show cause if the petition demonstrates that evidence exists to determine that one or more grounds exist pursuant to subsection (A) to suspend or revoke the licensee's license. The order to show cause shall set the matter for a public hearing before the authority.
- (C) The city clerk shall give written notice of the public hearing no later than ten days prior to the hearing by mailing, either electronically or by first class mail, the notice to the licensee at the address contained in the licensee's license. At the hearing, the licensee shall have the opportunity to be heard, to present evidence and witnesses, and to cross examine witnesses presented by the city. The local licensing authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the local licensing authority is authorized to conduct. The standard of proof at such hearings shall be a preponderance of the evidence. The burden of proof shall be upon the city. The local licensing authority shall be permitted to accept any evidence that they find to be relevant to the show cause proceeding.
- (D) The authority may impose the costs to conduct a public hearing upon a licensee who has violated any of the provisions of this chapter. The costs to conduct such a public hearing shall be established by the licensing authority.
- (E) The following shall be grounds for suspension or revocation of the licensee's license(s):
 - (1) A violation by a licensee or a licensee's officers, agents, or employees of any of the provisions of this chapter, or any laws of the city or the State of Colorado relating to the sale of marijuana products;
 - (2) Violations of any conditions imposed in connection with the issuance or renewal of the license;
 - (3) Failure to pay state or local taxes related to the operation of the business associated with the license;
 - (4) Loss of right of possession to the licensed premises;
 - (5) Fraud, misrepresentation, or a false statement of a material fact contained in the original or renewal license application or communication with the city.
 - (6) The licensee, or any of the agents or employees of the licensee, have committed any unlawful act as described in this chapter or violated any ordinance of the city

- or any state law on the premises or have permitted such a violation on the premises by any other person.
- (7) The odor of marijuana is perceptible to an ordinary person at the exterior of the building at the licensed premises or is perceptible within any space adjoining the licensed premises.
- (F) If the local licensing authority finds that a violation has occurred the local licensing authority may:
- (1) Revoke the license for any period up to and including permanent revocation;
 - (2) Suspend the license for any period of time;
 - (3) Impose a fine or fine in lieu of suspension of at least \$500.00 but no more than \$100,000.00; or
 - (4) Establish conditions that must be met before the license holder may apply for reinstatement of the license.
 - (5) In connection with the suspension of a license, the authority may impose reasonable conditions upon the license.
- (G) When imposing a suspension, fine, or fine in lieu of suspension against a marijuana establishment licensed under this chapter, the licensing authority shall not take into consideration any violation of this chapter by the licensee that occurred more than five years before the date on which the violation for which the suspension or fine is being imposed occurred.
- (H) The local licensing authority must establish factors to consider when determining the amount of fine to impose and a matrix of steps for fine amounts. These factors and matrix must be used consistently for all imposed penalties. The Colorado State marijuana enforcement penalty schedule may be used as a guide to create the local sentencing scheme.
- (I) Payment of any fine pursuant to the provisions of this chapter shall be in the form of cash or in the form of a certified check or cashier's check made payable to the clerk and recorder's office, and paid within 15 days of the imposed sanction.
- (J) If a license is suspended for any period of time, the licensee must post signage that states the license is under suspension or revocation due to violations of chapter 5-42, B.M.C., and that all sales of marijuana products are prohibited for the period of the suspension. The signage shall be prominently displayed at all entrances on the premises for the entirety of the suspension or revocation.
- (K) When a license has been revoked no new license shall be issued to the same licensee for the period of one year after the revocation.

5-42-310 - Additional remedies; penalty for violation.

Any person who fails to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be punishable as provided in chapter 1-12, B.M.C.

5-42-320 - Other remedies.

The city is specifically authorized to seek an injunction, abatement, restitution, or any other remedy necessary to prevent, enjoin, abate, or remove any violation or unlawful act under this chapter, and any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law or in equity. Such injunction, abatement, restitution, or other remedy necessary shall be filed in the municipal court.

Section 3. This ordinance shall be effective May 3, 2021.

INTRODUCED AND APPROVED after first reading on February 23, 2021, and ordered published in full.

INTRODUCED A SECOND TIME and approved on March 16, 2021, and further ordered published.

THE CITY AND COUNTY OF BROOMFIELD,
COLORADO



Mayor

ATTEST:



Assistant City Clerk



APPROVED AS TO FORM:



City and County Attorney



First Publication: March 4, 2021

Second Publication: March 25, 2021